

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FLOYD DOUGLAS ROEBUCK,

Defendant-Appellant.

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UNPUBLISHED

May 1, 2008

No. 279555

Saginaw Circuit Court

LC No. 06-027888-FH

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Defendant was convicted by a jury of one count of felon in possession of a firearm, MCL 750.224f, one count of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and two counts of assaulting, resisting, or obstructing a police officer, MCL 750.81d(1). He was sentenced as a second habitual offender, MCL 769.10, to a mandatory consecutive two-year prison sentence for the felony-firearm conviction to be served prior to concurrent prison terms of 13 to 36 months for assaulting, obstructing, or resisting a police officer, and 13 to 90 months for felon in possession of a firearm. We affirm. This case is being decided without oral argument under MCR 7.214(E).

Defendant argues that his trial counsel was constitutionally ineffective for stipulating that defendant was a felon and that he was not eligible to possess a weapon. We disagree.

In order to demonstrate the ineffective assistance of counsel, a defendant must show that “(1) counsel's performance was below an objective standard of reasonableness under professional norms and (2) there is a reasonable probability that, if not for counsel's errors, the result would have been different and the result that did occur was fundamentally unfair or unreliable.” *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007). However, the effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving trial counsel was ineffective. *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002). In addition, defense counsel has “wide discretion” with regard to trial strategy. *Id.* And conceding certain points at trial does not necessarily constitute ineffective assistance of counsel. *People v Emerson*, 203 Mich App 345, 349; 512 NW2d 3 (1994).

Defense counsel did stipulate that defendant was a felon. Counsel also stipulated that as a felon defendant was not allowed to possess a weapon. This does not constitute ineffective assistance of counsel under the circumstances of this case. “Where defense counsel . . .

recognizes and candidly asserts the inevitable, he is often serving his client's interest best by bringing out the damaging information and thus lessening the impact." *People v Wise*, 134 Mich App 82, 98; 351 NW2d 255 (1984).

Defense counsel argued that, even though defendant should not have had a weapon because of his prior felony conviction, defendant believed he was eligible to possess the rifle. To bolster this argument, defense counsel presented a firearm deer license and a voter registration card to the jury, both of which defense counsel suggested should not be issued to felons, but were issued to defendant.<sup>1</sup> In addition, defendant testified that he was issued a citation by a Department of Natural Resources officer while hunting in 2006 for not having orange on his clothing and that the DNR officer ran a check on his license and gave him his gun back. Finally, defendant testified that his probation officer told him he was able to go hunting after he fulfilled the terms of his probation. Presumably, as a part of his trial strategy, defense counsel presented this evidence to show the jury that defendant honestly believed he was allowed to have a hunting rifle in an attempt to lessen the impact of the damaging information against him. Indeed, during closing arguments, defense counsel reiterated the above evidence and asked the jury to return a not guilty verdict on all five counts. Thus, we conclude that defense counsel's performance was a matter of trial strategy.<sup>2</sup> Further, given the overwhelming evidence of defendant's guilt of the firearm charges, "there [was no] reasonable probability that, if not for counsel's [alleged] errors, the result would have been different." *Odom, supra* at 415. Therefore, defendant has not established a claim of ineffective assistance of counsel.

Affirmed.

/s/ Helene N. White

/s/ Joel P. Hoekstra

/s/ Michael R. Smolenski

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<sup>1</sup> In actuality, a convicted felon who is not confined for a felony conviction at the time of an election, e.g., a person who has completed a felony prison sentence or even a person on probation or parole for a felony, is eligible to vote in Michigan. See MCL 168.758b. Nevertheless, suggesting that defendant believed his right to own a firearm was restored because he was allowed to register to vote was consistent with the basic defense strategy of suggesting that defendant believed he was under no continuing legal disabilities due to his prior felony conviction.

<sup>2</sup> While we recognize that defense counsel's strategy in effect amounted to an appeal for jury nullification as to the firearms charges, i.e., an appeal to acquit him of those crimes although he actually committed them, we conclude that this was not an unreasonable strategy in light of the absence of any plausible basis to deny defendant's actual commission of the firearms charges.